



**Order under Section 69 / 88.1
Residential Tenancies Act, 2006**

Citation: Kurmally v Foreman, 2023 ONLTB 23586

Date: 2023-03-08

File Number: LTB-L-037706-22

In the matter of: 12, 1197 Weston Road
Toronto Ontario M6M4P6

Between: Rashid Kurmally Landlord

And

Donald Foreman Tenant

Rashid Kurmally (the 'Landlord') applied for an order to terminate the tenancy and evict Donald Foreman (the 'Tenant') because:

- the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex has substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlord or another tenant;
- the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex has wilfully or negligently caused damage to the premises.

Rashid Kurmally (the 'Landlord') also applied for an order requiring Donald Foreman (the 'Tenant') to pay the Landlord's reasonable out-of-pocket costs the Landlord has incurred or will incur to repair or replace undue damage to property. The damage was caused wilfully or negligently by the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex.

This application was heard by videoconference on February 23, 2023.

Only the Landlord attended the hearing.

As of 10:58 a.m., the Tenant was not present or represented at the hearing although properly served with notice of this hearing by the LTB. There was no record of a request to adjourn the hearing. As a result, the hearing proceeded with only the Landlord's evidence.

Determinations:

1. The Tenant was in possession of the rental unit on the date the application was filed.
2. The unit is an apartment in a multi-residential complex.

N5 Notice

3. On March 3, 2022, the Landlord gave the Tenant an N5 notice of termination with a termination date of March 31, 2022. The notice of termination contains the following allegations:

- The Tenant has been parking in the parking lot of the residential complex without permission from the Landlord;
- The Tenant has been parking in the neighbouring parking lot without permission;
- The Tenant damaged the glaze on the bathtub in the unit.

Parking

4. The Landlord testified that the Tenant did not pay for parking, and did not have the Landlord's permission to park in the parking lot of the residential complex, but had parked in the parking lot repeatedly. The Tenant had also parked in the parking lot of the building next door, which had resulted in complaints from the landlord of the neighbouring building.
5. The Landlord submitted an undated, unsigned letter from the landlord of the building next door into evidence, but did not provide any additional documentary or photographic evidence in support of his testimony and did not call any witnesses to testify. This is a landlord's application, and the Landlord bears the burden to prove the allegations, which I find the Landlord has not met with respect to the Tenant parking in the residential complex, or in the neighbouring parking lot.

Damage

6. The Landlord testified that when the Tenant moved into the rental unit, he had explained to the Tenant that the bathtub had been re-glazed, and gave him verbal instructions on how to care for the bathtub. The Landlord also left written care instructions from the contractor who had re-glazed the bathtub on the wall near the bathtub. At the beginning of January, 2022, the Landlord had inspected the unit, and discovered that the glaze had been damaged by the use of abrasive cleaning materials. The Landlord had the bathtub reglazed again. The Tenant refused to pay for the damage. The Landlord submitted a contractor's invoice for reglazing the bathtub in the Tenant's unit in the amount of \$395.50 and dated February 28, 2022 in support of his testimony.

7. Based on the uncontested and internally consistent evidence before me, I find, on a balance of probabilities that the Tenant, another occupant of the rental unit or a person whom the Tenant permitted in the residential complex wilfully or negligently caused undue damage to the rental unit or residential complex.
8. I further find that the Landlord incurred reasonable costs of \$395.50 to repair the damage.
9. The Landlord incurred costs of \$201.00 for filing the application and is entitled to reimbursement of those costs.
10. There is no last month's rent deposit.

Relief from eviction

11. The Landlord testified that after the application was filed, he became concerned for the safety of other tenants in the complex. The Landlord discovered a bullet hole in the window of the rental unit and additional bullet holes on the outside wall of the unit. The Landlord contacted the police, who informed him that the shooting appeared to have been intentional and have targeted the Tenant, and that it was a matter for the LTB. The Landlord further testified that the woman who had been living in the unit with the Tenant, had left the unit as a result. The Landlord submitted a photograph of the window with a hole in it, but did not provide any additional details of the incident or any supporting evidence, such as correspondence with the police or witness testimony, to support his testimony. As such, I did not have sufficient evidence with respect to the circumstances of the damage to the window, and have afforded the Landlord's testimony with respect to the bullet holes little weight in my consideration of relief from eviction.
12. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'). The Landlord testified that there is a child who visits the unit, but does not live there. The Tenant did not attend, and no other circumstances were presented to me. Therefore, I find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.

It is ordered that:

1. The tenancy between the Landlord and the Tenant is terminated. The Tenant must move out of the rental unit on or before March 19, 2023.
2. If the unit is not vacated on or before March 19, 2023, then starting March 20, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
3. Upon receipt of this order, the Court Enforcement Office (Sheriff) is directed to give vacant possession of the unit to the Landlord on or after March 20, 2023.

4. The Tenant shall pay to the Landlord \$395.50, which represents the reasonable costs of repairing the damage.
5. The Tenant shall pay to the Landlord \$201.00 for the cost of filing the application.
6. The total amount the Tenant owes the Landlord is \$596.50.
7. If the Tenant does not pay the Landlord the full amount owing on or before March 19, 2023, the Tenant will start to owe interest. This will be simple interest calculated from March 20, 2023 at 5.00% annually on the balance outstanding.

March 8, 2023

Date Issued

Kathleen Wells

Member, Landlord and Tenant Board

15 Grosvenor Street, Ground Floor,
Toronto ON M7A 2G6

If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.

In accordance with section 81 of the Act, the part of this order relating to the eviction of the Tenant expires on September 20, 2023 if the order has not been filed on or before this date with the Court Enforcement Office (Sheriff) that has territorial jurisdiction where the rental unit is located.